CF0000058463

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 1794 /1995

Appellant :: Bigan alias Jarmi son of Jitu Kodadu, aged 30 years, r/o Village : Parsi, P.S. Rajpur, Distt : Sarguja (MP).

1P399
filed on 2-11-95
by Shri A.C. Murty Advocate
R. to D.R.
2-11-95

Versus

Respondent :: The State of M.P.

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CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE 1973 :

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA No 1704 सन् 95 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -
HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.
1-2-2006

Shri B.D. Badgaiya, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

PER L.C. BHADOO,J

By the instant appeal, accused/appellant Bigan @ Jarmi has questioned the legality of the judgment of conviction and order of sentence dated 13-10-95 passed by learned Sessions Judge, Ambikapur in S.T. No.67/95 whereby learned Sessions Judge after holding the accused/appellant guilty under Section 302 of the I.P.C. for commission of murder of his wife Sudhani Bai sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 15-10-94 PW-6 Ramnath Yadav gave a merg intimation (Ex.-P/6) to the police station Rajpur to the effect that yesterday i.e. on 14-10-94, during the mid day, accused Bigan was quarrelling with his wife, therefore, his wife left his residence. When she was going towards Soogakata river, the accused chased her and attacked her with fists and kicks, as a result of which she had died. The body is lying on the spot. The blood is coming out of nose and there are injuries on various parts of the body. Based on this merg intimation, S.H.O. registered F.I.R. Ex.-P/5, left for the scene of

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मामला क्रमांक Cr.A.NO. 1704/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

occurrence and prepared Panchanama Ex.-P/8 of the dead body of Sudhani Bai. The dead body of Sudhani Bai was sent for postmortem examination to the Community Health Centre, Rajpur where Dr. Ashutosh Tiwari (PW-4) conducted the postmortem on the dead body of Sudhani Bai and prepared postmortem report Ex.-P/3.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur where in order to establish the charge the prosecution examined 6 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied prosecution evidence. After hearing Public Prosecutor and counsel for the accused, learned Sessions Judge convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Sudhani Bai is not in dispute.

As far as involvement of the accused in crime in question is concerned, PW-1 Bechan had witnessed the crime in question and has stated that he saw the accused was assaulting his wife with fists and kicks. He intervened on which the accused said that he would not assault his wife. On enquiry, Panchayat was convened in which the accused made extra judicial confession that he has murdered his wife. In the cross-examination, this witness has stated that deceased Sudhani Bai used to consume liquor. PW-3 Ramjatan has also corroborated the evidence of PW-1 and has stated that the accused made extra judicial

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

confession in the Panchayat. The evidence of these witnesses stands supported by the medical evidence of PW-4 Dr. Ashutosh Tiwari. Dr. Tiwari has stated that he conducted postmortem on the dead body of deceased Sudhani Bai and he found that there were abrasions on the body of Sudhani Bai. On internal examination, it was found that right kidney was ruptured and urinal bladder was also ruptured. In view of the above evidence, it is established that the accused was author of the crime in question, therefore, we do not find any illegality or infirmity in the judgment of the trial Court regarding involvement of the accused in crime in question.

Learned counsel for the accused/appellant argued that there was no intention of the accused to cause death of his wife. Moreover, the accused has not used any deadly weapon in assaulting Sudhani Bai. On a petty quarrel, when Sudhani Bai left the residence, the accused chased her and in a heat of passion, in a sudden quarrel, without any pre-meditation, the accused assaulted Sudhani Bai with fists and kicks, as a result of which her right kidney was ruptured and she died.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the medical evidence of PW-4 Dr. Ashutosh Tiwari and the evidence of eyewitness PW-1 Bechan. From the above evidence, it is established that the accused assaulted his wife with fists and kicks and no deadly weapon of offence was used. From the facts and evidence, it appears that the accused assaulted his wife in a heat of passion, in a sudden quarrel, when deceased Sudhani Bai left the house. Therefore, it cannot be said that the accused had any

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मामला क्रमांक Cr.A.No 1/2004 सन् 2005

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

intention to cause death of his wife. But from the evidence, it can definitely be inferred that the accused had knowledge while assaulting Sudhani Bai with fists and kicks on vital part of the organ that by assaulting with fists and kicks, she may receive any injury which may likely to cause her death. Therefore, intention on the part of the accused to commit murder of his wife is missing in this case, as such offence against the accused punishable under Section 304-II of the I.P.C. is made out.

In the result, the appeal is partly allowed. The conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. are set aside. Instead thereof, he is convicted under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 10 years. The accused is in custody since 1994, thereby he has undergone the sentence awarded. It is, therefore, directed that the accused be set at liberty forthwith unless required to be detained in any other case.

Sd/-
L.C. BHADOO
Judge

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Sd/-
Dhirendra Mishra
Judge

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8/2/06